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5/19/08

May 16, 2008

VIA FACSIMILE (212) 805-4268 AND REGULAR MAIL

The Honorable Gabriel W. Gorenstein
 United States Magistrate Judge
 Southern District of New York
 500 Pearl Street, Room 510
 New York, NY 10007

On April 4, 2008, the Clerk of the Court provided the plaintiff with a certified entry of default (copy attached), which plaintiff submitted to the Court along with an application for a default judgment. Accordingly, the Court had intended to be clear that the defendants were to move to set aside only this "entry of default" pursuant to Fed. R. Civ. P. 55(a) – not to set aside a "default judgment" (under Fed. R. Civ. P. 55(b)). The two applications are governed by different standards, as reflected under Fed. R. Civ. P. 55(c).

SO ORDERED: DATE: 5/19/2008
 GABRIEL W. GORENSTEIN
 UNITED STATES MAGISTRATE JUDGE

Re: Charles Rosen v. Gloria Wise Boys & Girls Club et al.
 Civil Action No. 08-1260 (PAC-GWG)

Dear Magistrate Judge Gorenstein:

This firm represents Defendants in the above-referenced action. At this morning's conference, Your Honor indicated that your clerk had entered a default judgment against Defendants, advised Defendants to move the Court to be relieved of the default judgment, and set a schedule for the filing of motion papers.

Upon returning to my office, I reviewed the Court's docket sheet which, as of today, does not include an entry of default judgment against Defendants. It would thus seem premature for Defendants to move for relief from the default judgment at this juncture.

We respectfully request that the Court provide the parties with further instruction on how to proceed in light of the current procedural posture of this case.

Sincerely,



Craig A. Tamamoto

cc: Charles Rosen (via e-mail and regular mail)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHARLES ROSEN,)	
)	
Plaintiff,)	
)	
v.)	
)	
GLORIA WISE BOYS & GIRLS CLUB,)	
GLORIA WISE BOYS & GIRLS)	
CLUB 401(k) PLAN, ANDREA)	
CARTER in her capacity as Plan)	
Administrator, FREDERICK A.)	
LEWIS in his capacity as Plan)	
Administrator)	
)	
Defendants.)	

CLERK'S CERTIFICATION

08-Civ. 1260

I, J. MICHAEL McMAHON, Clerk of the United States District Court, for the Southern District of New York, do hereby certify that the docket entries in the above entitled action indicate that the Summons and Complaint herein was filed on February 7, 2008, and that the defendant was served with a copy of the complaint and summons by CHARLES S. FLEMMING by serving defendant GLORIA WISE BOYS & GIRLS CLUB, GLORIA WISE BOYS & GIRLS CLUB 401(k) PLAN, ANDREA CARTER in her capacity as Plan Administrator, and FREDERICK A. LEWIS in his capacity as Plan Administrator by CHARLES S. FLEMMING, a person authorized to serve the summons and complaint under Fed. R. Civ. P. 4(c) by serving personally CARMEN FIGUEORA on February 12, 2008, 2:43pm at 950 Baychester Avenue, Bronx, NY 10475 and by mail on February 13, 2008 to defendant ANDREA CARTER in her capacity as Plan Administrator and FREDERICK A. LEWIS in his capacity as Plan Administrator at 950 Baychester Avenue, Bronx, NY 10475 by CHARLES S. FLEMMING, a person authorized to serve the summons and complaint under Fed. R. Civ. P. 4(c).

I further certify that the docket entries indicate that the

defendants have not filed an answer or otherwise moved to with respect to the complaint herein. The default of the defendants is hereby noted.

DATED: NEW YORK, NEW YORK

4/4/08

Michael McMahon
CLERK
By J. Funn
DEP CLERK